

**Town of Amherst**  
**Zoning Board of Appeals - Special Permit**

*DECISION*

**Applicant:** Moreland Restaurant Groups, LLC; c/o Christoph D.J. Moreland

**Date application filed with the Town Clerk:** June 22, 2206

**Nature of request:** A Special Permit to operate a Class II restaurant and bar with food delivery service ("Charlie's Tavern"), due to change in ownership in accordance with Condition #2 of ZBA SY83-53

**Address:** 1 Pray Street (Map 11C, Parcel 274, B-G Zoning District)

**Legal notice:** Published on June 27 and July 4, 2006 in the Daily Hampshire Gazette and sent to abutters on June 26, 2006.

**Board members:** Ted Rising. Barbara Ford and Russell Frank

**Submissions:** The petitioner submitted the following documents with his application:

- An Amherst GIS map of the Pray Street area showing the available parking associated with Charlie's Tavern building, plus the adjacent municipal metered parking area.
- A management plan for the restaurant and proposed added delivery service
- A floor plan of Charlie's Tavern
- Pictures of building exterior that show the signage for the tavern
- Copies of previous Special Permits for Charlie's Tavern, ZBA FY78-35 and FY83-53

**Site Visit:** July 11, 2006

The Board met with Mr. Moreland at Charlie's Tavern. They observed the following:

- The surrounding business district with other bar/restaurants, banks, and many small stores
- The free parking next to the building, and the municipal parking area across Pray Street.
- The alley behind the building which is semi-accessible to delivery vehicles
- The residential areas at a distance - beyond the West Cemetery, Triangle Street, East Pleasant Street, and Kendrick Park
- The L-shaped interior, with a large bar in the middle, tables and chairs on one side, and pool tables on the other side.
- The main entrance door facing East Pleasant Street, and a second means of egress along Pray Street.
- The third entrance in the back for deliveries to the kitchen
- The waste and recycling dumpsters in the back which are shared with adjacent businesses

**Public Hearing:** July 11, 2006

ZBA Chair Rising began the hearing by reviewing the documents that had been submitted.

Christoph Moreland, 91 State Street, spoke to the petition at the hearing. Accompanying him were

his brother Stephen Moreland, partner in Moreland Restaurant Group, LLC, and Richard Slobody, a current owner of Charlie's Tavern.

Mr. Moreland gave the following information at the hearing:

- He and his brother have a purchase-and-sale agreement with Amherst Restaurant Enterprises, the owners of Charlie's Tavern, to buy the tavern.
- The Moreland partners wish to keep the same tavern business that exists now, but add a food delivery service.
- The delivery service would be called "The Cape Cod Pizza House" and will feature seafood dinners and pizza.
- The kitchen equipment at Charlie's is underused at present; the delivery service would not change the existing kitchen equipment, but would make it more viable.
- The Moreland brothers are trained in safe alcohol service as Bar Code Instructors. Christoph has over 6 years experience as a Bar Code Instructor and a ServSafe Instructor for food handling. Stephen has 2 years experience as a Bar Code instructor.
- Ninety percent of Charlie's employees are certified for safe alcohol service. Those employees include the bartenders, the bar back-ups (similar to waiters), the doorkeepers, and the I.D. checkers. The employees not certified are the cooks and delivery people.
- Occupancy inside the tavern has been 99 and will stay the same.
- Number of employees on duty varies from 4 to 9. Charlie's is very pro-active in terms of safety. Extra help is on call, and the manager adds employees depending on needs of the evening.
- Approximately 9 employees are used on busy nights. They consist of a doorkeeper at each entrance, a "floater" to help check IDs and keep control, 2 or 3 bartenders, and 2 "bar-backs."
- There will be two cooks to prepare food for the tavern and the delivery businesses, and two drivers for deliveries. As the business grows, more drivers may be added.
- The deliveries of food and alcohol to Charlie's are made to the kitchen in the back of the building. There are no dedicated spaces for deliveries in the parking lot or in the back alleyway, but there is extra room by the parking spaces for the trucks to park.
- Charlie's is an icon: its name is known all over the area. The food delivery service will have a different name in order to emphasize its independence. The expanded menu, with emphasis on seafood and pizza will be available for both businesses.
- Christoph Moreland has been the manager of Charlie's for over 6 years and has worked there for 12 years. Prior to that he was a police officer.
- There have been no incidents or issues since he has worked at Charlie's
- Parking around the building includes 28 private spaces plus 25 municipal spaces; 25 are required, given the occupancy level.

Mr. Rising inquired about the hours of operation listed on the management plan. The 8 a.m. opening stated in the plan does not match the menu given by the applicant (mostly fried foods). Mr. Moreland said that occasionally Charlie's serves brunch for special occasions, such as homecoming or charity events. The cooks arrive at 8 a.m. on normal days as well. The Board noted that the hours of operation refer to when the public is served, not when the cook begins his preparations.

Mr. Rising inquired about vender deliveries. The management plan lists deliveries from 8 a.m. to 6 p.m. The Town often restricts deliveries to morning hours, particularly in the central business

district, he said. Mr. Moreland responded that unfortunately deliveries are not under his control. Most deliveries are made between 11 a.m. and 4 p.m., but occasionally food or alcohol deliveries to Charlie's are at the end of the delivery schedule – hence the later time.

Mr. Moreland also said that parking for deliveries is not a problem between 4 and 6 p.m., since the students don't come out in numbers until 10:30 p.m. now. Students used to frequent the bars earlier in the evening, but now they come later, stay later. In addition, the non-food businesses in the area close by late afternoon and free up parking in the area. There is more room for truck parking in the Pray Street area than there is along North Pleasant or Main Streets.

Mr. Rising asked about the amount of signage on the west side of the tavern facing East Pleasant Street. Section 8.20 of the Zoning Bylaw states that the total area of signs on a wall shall not exceed 10% of the wall area in a business district. Mr. Rising wondered if the limit may have been exceeded, and asked the applicant if he had calculated the coverage on that side of the building. The Pray Street side easily meets the Bylaw standard.

Richard Slobody, 916 South East Street, responded to the sign question. He said that he has owned Charlie's for 28 years, and in 1988 he remodeled the bar, and put up all the existing signs at that time, including the neon beer signs in the windows. Mr. Slobody said that the ZBA gave a Special Permit in 1988 for these changes. (For the record, however, the ZBA staff assistant could find no record of this Special Permit. It was speculated that it might have been a Design Review Board meeting in 1987 to which Mr. Slobody was referring.) Mr. Slobody said the only change has been the addition of the large paper sign in the west window that does exceed the 10% limit. It can be removed.

Assistant Building Commissioner Mark Snow asked if the kitchen will be changed, since pizza is going to be added to the menu. The applicant responded that the pizza ovens already exist in the kitchen.

Ms. Ford asked about the live entertainment listed on the management plan. The applicant stated that he may want some at times, simply for the enjoyment of the customers. Two or three musicians, most likely guitar and vocals, could perform on a small area in the north-east corner of the room. The "stage" would just be a 5' x 8' riser, and would replace one of the tables in that corner. Amplification may be needed, but it would not exceed the decibel level of the existing juke box amplification.

There is a sound system with the juke box. Live musicians will not tap into this system, but will have their own amplification system. Charlie's is sound proofed, the applicant stated, and the sound does not emanate beyond the building.

Mr. Snow asked about lighting indoors, whether the lighting will be dimmed for the live entertainment. He said that building and safety codes are more stringent if an establishment borders on being a nightclub. Lighting should be maintained during the live entertainment, particularly if dancing is available. The petitioners assured the Board that they want to avoid the safety problems associated with nightclubs.

The Board asked for more clarification on the hours of operation for the two businesses and alcohol use. Mr. Moreland stated the following:

- Charlie's regular hours during the academic year are 10 a.m. and 1:30 a.m. 7 days/week.

- All employees dealing with alcohol receive training within 30 days of employment.
- Food will be available at all times when Charlie's is open. Starting at midnight, food and drink are served in plastic take-out containers since the kitchen will use only delivery-type containers after midnight.
- No food or drink is allowed outside the building.
- Last call for drinks is 12:45 a.m., service is stopped at 1 a.m., drinks are removed by 1:15 a.m. and customers must leave by the 1:30 a.m. closing.
- There may be reduced hours during the summertime or when the students are not in town.
- For special occasions – not more than 8 times per year – Charlie's opens at 8 a.m. for brunch-type food. Alcohol is available then as well.
- The food delivery service is requesting the hours of 10 a.m. to 2 a.m. These are the typical hours for food-delivery service, although Bruno's stays open until 3 a.m.
- There will be no catering of food.

Mr. Frank asked about ventilation in the kitchen, since many of the new menu items seem to feature fried foods. Mr. Moreland stated that Charlie's used to have a larger menu than it currently has, and fried foods were on the menu. The kitchen is vented and has the necessary equipment for fried foods.

Mr. Frank asked if Mr. Moreland will continue to be the general manager for the tavern. Mr. Moreland replied that, as the part-owner, he will continue to be the general manager for some time. He has to feel comfortable before turning the duties over to someone else, he stated. There are two managers who have been there for three years already and are well-trained, but they still are not qualified as a general manager. His brother Stephen is involved with the financial end of the business, but he is going to learn the daily management of the businesses as well.

Mr. Slobody, the current owner, stated that Charlie's has the best reputation in Town [for a tavern]. He understands that the Board has to be very careful, that they are the first line of defense for potentially troublesome businesses. But Charlie's has been managed well through the years, he said, and it will continue to maintain the good track-record with the Moreland brothers as owners and managers of the business.

Mr. Frank made a motion to close the evidentiary portion of the hearing. Ms. Ford seconded the motion, and the vote was unanimous to close the hearing.

#### **Public Meeting - Discussion:**

The Board agreed that the application meets the standards of Section 3.352.1 of the Zoning Bylaw Class II restaurants in terms of the management plan, safe alcohol service, and noise/customer control.

The Board discussed the hours of operation for the three parts of this business – the tavern, the food delivery business and the special functions. They decided that separate hours should be conditioned for the three separate parts. Mr. Frank suggested that when special functions are scheduled which have earlier hours than the usual tavern hours, the Building Commissioner's office be notified. The petitioners agreed that this procedure would work.

#### **Public Meeting - Findings:**

The Board finds under Section 10.38 of the Zoning Bylaw, Specific Findings required of all Special

Permits, that:

10.380 & 10.381 – The proposal is suitably located, since the property is located within the Town's General Business District. The proposal is compatible with existing uses, since there are two other bars in the immediate area which also have been in operation for 20+ years. Charlie's is most busy in the late evening hours when the nearby daytime businesses are closed, so that parking and noise are not problems for the immediate neighbors.

10.382, 10.385 & 10.393 – The proposal does not constitute a nuisance due to noise, odor or lights because noise is regulated both by the management of the business and by the conditions of this permit. Cooking odors are vented, and the building has no immediate residential neighbors. Lighting in the parking areas are Town street lights, and Charlie's has the required lighting over the doorways.

10.383 & 10.387 – The proposal is not a substantial inconvenience or hazard to abutters, vehicles or pedestrians because there is adequate parking in the area, there are sidewalks and the building is located on a relatively quiet street (Pray) for the business district.

10.384 – Adequate and appropriate facilities are provided for the proper operation, since this tavern has operated successfully for 28+ years, 5 years under Mr. Moreland's general management. There is sufficient standing and seating room within the tavern; there are two means of egress for the patrons, and a third off the kitchen. Management adds staff as needed, and the applicants' train their staff is safe service of alcohol.

10.386 – The proposal is in conformance with the Parking and Sign regulations of the Zoning Bylaw, since there is ample private and public parking adjacent to the business, and the removal of one sign will bring the west side of the building into compliance.

10.388 – The proposal ensures adequate space for off-street loading and unloading of supplies because there is easy access to the kitchen door from the wide alley or extra space next to the parking area on the west side of the building.

10.389 – The proposal provides adequate methods of disposal of wastes – the building is on Town water/sewer; there is a shared dumpster in the back for refuse which get emptied two or three times per week, there are recycling bins for bottles behind the building; deposit bottles (beer) are returned to the vendor; and there is a cooking oil drum behind the kitchen which is recycled by Western Mass Rendering.

10.391 – The proposal will maintain the unique features of Charlie's Tavern, which the applicants call an "historic icon" in Amherst.

10.396 – The proposal provides some screening for storage of equipment and of dumpsters, since they are stored behind Charlie's in the alley and between two buildings.

10.397 – The proposal provides recreational facilities with the pool tables, juke box and bar.

10.398 – The proposal is in harmony with the general purpose and intent of the Zoning Bylaw because it provides a convenient and well-managed place for patrons to eat, drink and be merry, within limits. A food delivery service that features seafood dinners will provide a needed niche in Town as well.

#### **Public Meeting - Zoning Board Decisions:**

Ms. Ford made a motion to APPROVE the Special Permit application, with conditions. Mr. Frank seconded the motion.

For all of the reasons stated above, the Board VOTED UNANIMOUSLY to GRANT a Special Permit to the Moreland Restaurant Group, LLC to operate a class II restaurant and bar ("Charlie's Tavern") with food delivery service and live entertainment under Sections 3.352.1 and 5.042 of the Zoning Bylaw on the premises at 1 Pray Street, (Map 11C/Parcel 274, B-G Zoning District), with conditions.

After discussion of the conditions needed for the permit, Ms. Ford made a motion to accept the conditions of the Special Permit as formulated by the Board. Mr. Frank seconded the motion, and the vote was unanimous to approve the conditions of the Special Permit.

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TED RISING

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BARBARA FORD

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RUSSELL FRANK

FILED THIS \_\_\_\_\_ day of \_\_\_\_\_, 2006 at \_\_\_\_\_,  
in the office of the Amherst Town Clerk \_\_\_\_\_.

TWENTY-DAY APPEAL period expires, \_\_\_\_\_ 2006.  
NOTICE OF DECISION mailed this \_\_\_\_\_ day of \_\_\_\_\_, 2006  
to the attached list of addresses by \_\_\_\_\_, for the Board.

NOTICE OF PERMIT or Variance filed this \_\_\_\_\_ day of \_\_\_\_\_, 2006,  
in the Hampshire County Registry of Deeds.

**Town of Amherst**  
**Zoning Board of Appeals**

*SPECIAL PERMIT*

The Amherst Zoning Board of Appeals hereby grants a Special Permit to the Moreland Restaurant Group, LLC to operate a class II restaurant and bar ("Charlie's Tavern") with food delivery service and live entertainment under Sections 3.352.1 and 5.042 of the Zoning Bylaw on the premises at 1 Pray Street, (Map 11C/Parcel 274, B-G Zoning District) subject to the following conditions:

1. The regular hours of operation for Charlie's Tavern shall be 10 a.m. to 1:30 a.m. seven days per week.
2. For special occasions, and no more than 8 times per year, Charlie's Tavern may open at 8 a.m. Notice of the change in opening time shall be sent to the Building Commissioner's office at least 48 hours in advance.
3. The hours of operation for the food delivery business shall be 10 a.m. to 2 a.m. seven days per week.
4. Live entertainment may be offered only between the hours of 9 p.m. and 1 a.m.
5. Live entertainment shall be limited to three performers.
6. The decibel level of the live entertainment shall be no louder than that of the juke box amplification and shall not be audible beyond the boundaries of the property.
7. The exterior signs, including those in the windows meant to be seen from the exterior, shall be as shown on the photographs of the building approved by the Board at a public meeting July 11, 2006, and on file in the office of the Board of Appeals, Planning Department.
8. Any significant changes to the signage or to the exterior of the building shall be submitted to the Board for its review and approval at a public meeting.
9. All employees dealing with alcohol service – barkeeps, bar-backs, doormen, etc – shall be trained in the safe service of alcohol within 30 days of beginning employment.
10. All managers shall be certified as a Bar Code Instructor or ServSafe for responsible alcohol service.
11. The business shall be managed as described in the Management Plan approved by the Board at the public meeting July 11, 2006
12. This permit is issued to the Moreland Restaurant Group, LLC, and shall expire upon change of ownership of the business.
13. Any change to either the structure of the partnership agreement or the identity of the partners of Moreland Restaurant Group shall be considered a change in the ownership of the business.

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EDWARD J. RISING, Chair  
Amherst Zoning Board of Appeals

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DATE